

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOSE G. RODRIGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

:
:
:
:
:
:
:
:
:
:

Civ. No. 16-4397 (RBK)

MEMORANDUM AND ORDER

Petitioner is a federal prisoner who is proceeding with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Previously, petitioner brought a § 2255 motion in this Court that was denied by this Court. *See Rodriguez v. United States*, No. 11-0949, 2011 WL 3328519 (D.N.J. Aug. 1, 2011). Petitioner admits in this instant § 2255 motion that the United States Court of Appeals for the Third Circuit denied a certificate of appealability on November 1, 2012.

Petitioner filed this § 2255 motion in this Court in July, 2016. The government responded that the motion should be denied because it is a second or successive § 2255 motion that lacks the proper authorization from the Third Circuit to be filed in this Court. This Court agrees with respondent's position. If a "second or successive" habeas petition is filed in the district court without authorization from the appropriate court of appeals, the district court may dismiss for lack of jurisdiction or transfer the petition to the court of appeals pursuant to 28 U.S.C. § 1631. *See Padilla v. Miner*, 150 F. App'x 116, 117 (3d Cir.2005); *Littles v. United States*, 142 F. App'x 103, 104 n.1 (3d Cir.2005) (citing *Robinson v. Johnson*, 313 F.3d 128, 139 (3d Cir.2002)). As petitioner must first seek authorization from the Third Circuit before moving forward with his second or successive § 2255 motion, this Court will transfer this action to the Third Circuit so

that it can determine whether petitioner has met the requisite standard to file a second or successive § 2255 motion.

Accordingly, IT IS this 29th day of August, 2016,

ORDERED that the Clerk shall transfer this action to the United States Court of Appeals for the Third Circuit so that Court may determine whether petitioner may proceed with a second or successive § 2255 motion; and it is further

ORDERED that the Clerk shall serve this Order on petitioner by regular U.S. mail; and it is further

ORDERED that the Clerk shall mark this case as closed in this District in light of the transfer to the Third Circuit.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge